

# HOUSE . . . . . No. 949

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## The Commonwealth of Massachusetts

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PRESENTED BY:

**Paul Kujawski**  
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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to AMMEND CHAPTER 140E CREDIT CARD MERCHANT AGREEMENTS .

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PETITION OF:

NAME:

Paul Kujawski

DISTRICT/ADDRESS:

8th Worcester

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT TO AMMEND CHAPTER 140E CREDIT CARD MERCHANT AGREEMENTS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

Section 1. As used in this chapter, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:--

“Acquiring bank”, a financial institution licensed to do business in the Commonwealth providing merchant accounts.

“Chargeback”, a credit card or debit card transaction that is either billed back to a merchant or deducted from a merchant’s account.

“Credit card”, (a) any instrument or device, whether known as a credit card, charge card, credit plate, courtesy card or identification card or by any other name, issued with or without a fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value, either on credit or in possession or in consideration of an undertaking or guaranty by the issuer of the payment of a check drawn by the cardholder on a promise to pay in part or in full at a future time, whether or not all or any part of the indebtedness represented by this promise to make deferred payment is secured or unsecured; (b) any stored value card, smart card or other instrument or device that enables a person to obtain goods, services or anything else of value through the use of value stored on the instrument or

device; and (c) the number assigned to an instrument or device described in clause (a) or (b) of this paragraph even if the physical instrument or device is not used or presented.

“Debit Card”, (a) any instrument or device whether known as a debit card, ATM card, check card, electronic benefit transfer card or any other access instrument or device, other than a check, that is signed by the holder or other authorized signatory on the deposit account that draws monies from a deposit account in order to obtain money, goods, services or anything else of value; and (b) the number assigned to an instrument or device described in clause (a), of this paragraph even if the physical instrument or device is not used or presented.

“Financial institution”, (a) any bank, banking association, trust company, federal or state savings and loan association, including all banks for cooperatives organized under the United States Farm Credit Act of nineteen hundred and thirty-three, existing by authority of the United States, or any state, or a foreign country, or any law of the commonwealth; (b) any other institution, association or entity, the deposits or accounts of which are insured under the Federal Deposit Insurance Act or by the Federal Deposit Insurance Corporation, any institution, association or entity, which is a member of a federal Home Loan Bank, any other bank or thrift institution incorporated or organized under the laws of a state which is engaged in the business of receiving deposits; (c) any corporation subject to chapter one hundred and sixty-seven A, or registered under the Federal Bank Holding Company Act of nineteen hundred and fifty-six, or registered as a savings and loan holding company under the Federal National Housing Act, as amended, including any subsidiary which participates in the filing of a consolidated return of income to the federal government; (d) any corporation subject to supervision by the division of banks including but not limited to corporations described in section twenty-four of chapter ninety-three; sections ninety-six to one hundred and four or section one hundred and fourteen C of chapter one hundred and forty; section thirty-eight of chapter one hundred and sixty-seven; section five of chapter one hundred and sixty-seven B; chapter one hundred and sixty-nine A; chapter two hundred and fifty-five B; chapter two hundred and fifty-five C; chapter two hundred and fifty-five D; and chapter two hundred and fifty-five E; or (e) any

other corporation organized under the laws of the United States, the commonwealth or any other state or a foreign country which, in substantial competition with financial institutions as defined in any or all of clauses (a) to (d), inclusive, derives more than ten percent of its gross income, excluding nonrecurring, extraordinary items, from credit card and debit card activities.

“Interchange fee”, the fee that an acquiring bank pays to an issuing bank when a cardholder uses a credit card or debit card as payment during a retail transaction.

“Issuing bank”, a financial institution which issues credit cards or debit cards to cardholders.

“Merchant account”, a bank account that allows a merchant to accept credit card or debit card payments.

“Merchant”, a person licensed to do business in the Commonwealth who offers goods or services for sale in the Commonwealth.

“Person”, a natural person, business organization, financial institution or any other legal entity, however formed.

## **Disclosure of Rules**

Section 2. (a) Whenever a contract authorizing a merchant to accept a credit card or debit card specifies that the merchant is bound by the rules of a financial institution, the contracting financial institution must promptly: (i) provide the merchant access to the complete rules referenced in the contract, either individually or through an acquiring bank; (ii) notify the merchant whenever a rule is modified or a new rule added, specifically referencing and explaining the substance of the modification or new rule; and (iii) provide a copy of any new or modified rule.

(b) A contract authorizing a merchant to accept a credit card must contain: (i) the contracting financial institution’s complete schedule of interchange fees, credit card and debit card transaction rates and any

other fees that the financial institution charges to merchants; and (ii) an explanation of which rates apply to the merchant and the situations in which those rates apply.

(c) A contract authorizing a merchant to accept a credit card or debit card may not require a merchant to agree not to disclose the contracting financial institution's rules or rates as a condition of receiving access to the rules or rates.

(d) A merchant shall not be liable for any charge, chargeback or other fees associated with its credit card or debit card transactions under any rule, rate or fee schedule unless the contracting financial institution has complied with the provisions of this section relative to the charge, chargeback or other fee imposed.

### **Certain Charges Prohibited**

Section 3. A contract authorizing a merchant to accept a credit card or debit card may not give a financial institution the right to impose a chargeback or otherwise charge a merchant or deduct from the merchant's account the cost of a credit card or debit card transaction because the amount of the transaction exceeds a predetermined amount.

### **Application of Fees to Taxes Prohibited**

Section 4. Discount rates, transaction charges, interchange rates, or any other charges or fees charged to merchants or deducted from credit card or debit card sales for processing credit card or debit card transactions shall not be applied to that portion of the credit card or debit card sales transaction representing the tax or excise collected by the merchant incident to a sale of any goods, meals, commodities, or services in accordance with chapters 64A, 64C, 64E, 64G, 64H, 64I, 64J, or 64K.

### **Waivers Prohibited**

Section 5. A contract authorizing a merchant to accept a credit card or debit card may not require a merchant to limit or waive its rights under this chapter.

### **Remedies; Penalties**

Section 6. (a) In addition to any other common law or statutory remedy provided by law, any violation of this chapter shall be deemed to be a prohibited practice under section 2(a) of chapter 93A.

(b) The superior court shall have jurisdiction of any complaint to restrain and enjoin any violation of this chapter.

(c) Any person who violates any of the provisions of this chapter shall be punished by a fine of not less than \$1,000 or more than \$10,000. Each charge, chargeback or other fee imposed or levied in violation of this chapter and each day of noncompliance with the provisions of sections 2, 3 or 5 shall constitute a separate offense.

### **Application; severability**

Section 7. (a) This chapter, being necessary for the welfare of the Commonwealth and its inhabitants, shall be liberally construed to effect its purposes.

(b) If any section, subsection, sentence, clause or phrase of this legislation, or any application of such provision to any person or circumstance shall for any reason be held invalid, the remaining portions of the chapter or the application of such provision to a person or circumstance other than that as to which it is held to be invalid, shall not be affected thereby.

**SECTION 2.** This act shall take effect on January 1, 2010.